

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAFEDERATED NATIONAL MORTGAGE
ASSOCIATION,

No. C-11-1444 EMC

Plaintiff,

**ORDER GRANTING PLAINTIFF'S *EX*
PARTE MOTION FOR REMAND**

v.

(Docket No. 4)DON A. HARDING, *et al.*,

Defendants.

Plaintiff Federated National Mortgage Association ("FNMA") initiated this unlawful detainer action in state court. Defendants, proceeding pro se, removed the lawsuit to this Court on March 25, 2011. Currently pending before the Court is FNMA's ex parte motion to remand. The Court gave Defendants an opportunity to file a response to FNMA's motion. No response was filed. Having considered the papers that have been filed, as well as all other evidence of record, the Court hereby **GRANTS** FNMA's motion.

First, remand is appropriate because Defendants' removal was not timely. Under 28 U.S.C. § 1446(b), a notice of removal must be filed "within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based" 28 U.S.C. § 1446(b). In the instant case, Defendants were served with the summons and complaint on November 7, 2010. *See* Not. of Removal ¶ 2 (stating such). However, they did not remove the case until March 25, 2011 – *i.e.*, almost five months later – well beyond the thirty-day window provided for by § 1446(b).

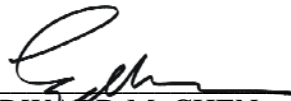
1 Second, remand is proper because this Court lacks subject matter jurisdiction. In their notice
2 of removal, Defendants assert that there is federal question jurisdiction because FNMA has violated
3 their right to due process. However, federal question jurisdiction depends on the contents of the
4 plaintiff's well-pleaded complaint; a case may not be removed to federal court based on a federal
5 defense, *see ARCO Envtl. Remediation, L.L.C. v. Department of Health & Envtl. Quality of St. of*
6 *Mont.*, 213 F.3d 1108, 1113 (9th Cir. 2000), or a federal counterclaim. *See Holmes Group, Inc. v.*
7 *Vornado Air Circulation Systems, Inc.*, 535 U.S. 826 (2002).

8 Accordingly, FNMA's motion to remand the case back to the state court from which it was
9 removed is granted. The Clerk of the Court is instructed to enter judgment in accordance with this
10 opinion and close the file in the case.

11 This order disposes of Docket No. 4.

12
13 IT IS SO ORDERED.

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15 Dated: June 14, 2011

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17 
EDWARD M. CHEN
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERATED NATIONAL MORTGAGE
ASSOCIATION,

No. C-11-1444 EMC

Plaintiff,

v.

CERTIFICATE OF SERVICE

DON A. HARDING, *et al.*,

Defendants.

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

DON A. HARDING
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CYNTHIA HARDING
104 Spears Circle
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Dated: June 14, 2011

RICHARD W. WIEKING, CLERK

By: /s/ Leni Doyle
Leni Doyle
Deputy Clerk